

Free Speech and Hate Speech

HUMS3001 Lecture Three

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- Quick individual reflection:
 - Do you think freely
 - Do you form free opinions
 - Do you have freedom of expression
 - Are there any restrictions on your thought, opinion, or expression

Lecture Overview

- Free Speech
 - Negative Freedom, Positive Freedom
- Hate Speech
 - Speech and Action, Verifying Consequences
- Preventing Harmful Speech (Liberally)
 - U.S. Bill of Rights, Canadian Charter of Rights
- Stanley Fish and “Free Speech”
 - Nonexistence, Limits, Responsibility

Lecture Questions

What is at stake when speech is restricted?

What are the problems of universalising rights?

Summary of Week 3

- Liberty
- Harm Principle
- Democracy
- Media

- Free Speech
 - The idea that the truth can be attained through the “dissemination of new information and/or knowledge [...] has been derived from the work of John Stuart Mill, [and] the argument persists in the contemporary free speech debate” (Gelber *Speaking Back* 29).

- “Negative freedom”

- “When a negative conception of liberty is assumed in arguments used to frame speech policy, the policy which results is inevitably conceived of as an absence of restraint on speech” (Gelber *Speaking Back* 36)

- “Positive Freedom”

- “historically, libertarian free speech arguments view the state as the enemy of freedom. [...] a democratic theory of speech which incorporates the premise that *fostering* full and open debate is a permissible role for the state” (Gelber *Speaking Back* 37)

Speech and Action

- J.L. Austin, *How to do things with words* (1962)
 - “The term [...] ‘performative’ is derived, of course, from ‘perform’ [...]: it indicates the issuing of the utterance is the performing of an action, [...] The uttering of the words is, indeed, usually a, or even *the*, leading incident in the performance of the act.” (6-8)

Hate Speech

- Katharine Gelber, “Hate Speech in the Australian Legal and Political Landscape”
 - “Hate speech enacts hatred, not just a psychological dislike for another human being, but a manifestation of prejudice; systematic and institutionalised marginalisation which can be identified via considerable historical evidence [...] hate speech enacts prejudice discursively in complex ways, and with concrete negative consequences for its targets” (16)

- Should hate speech be censored?

US First Amendment (1789):

- “Congress shall make no law [...] abridging the freedom of speech, or of the press [...]”

- How can hate speech be censored under liberalism?

- Canadian Charter of Rights and Freedoms

Section 1: “guarantees the rights and freedoms [...] only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”

Section 2 (b): “Everyone has the following fundamental freedoms [...] freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication”

- Stanley Fish (b.1938):
 - U.S public intellectual – blogs for *NYTimes*
 - One of the most influential literary critics in recent decades
 - Reader-response theory – the true meaning of a text is nonexistent, the reader creates their own (communal) meanings

Free speech is nonexistent

- “The exception to unregulated expression is not a negative restriction but a positive hollowing out of value—we are for *this*, which means we are against *that*—in relation to which meaningful assertion can then occur” (103)
- The unacknowledged truth for those who regulate free speech is that they “are never in the business of protecting speech per se, ‘mere’ speech (a nonexistent animal); rather, they are in the business of classifying speech (as protected or regulatable) in relation to a value” (106)

Limits and Politics

- “people cling to First Amendment pieties because they do not wish to face what they correctly believe to be the alternative. That alternative is *politics* [...] When the First Amendment is successfully invoked, the result is not a victory for free speech in the face of a challenge from politics but a *political victory* won by the party that has managed to wrap its agenda in the mantle of free speech.” (110)
- Claiming something to be free speech “will always be evidence that a political line has been drawn rather than a line that denies politics entry into the forum of public discourse” (114)

Unfree Speech

- “unfreedom”
 - the prevention (through punishment or threat of punishment) of someone’s action
- Felix E. Oppenheim *Political Concepts* (1981)
 - “unfreedom is, like control, a matter of degree”

- Speech and Responsibility

- “*because* speech is never free [...] we must take responsibility for our verbal performances” (Fish 114)

Wiki Expectations

- **Demonstrates understanding of course material.**
- **Demonstrates an engagement with a critical concept.**
- **Develops and sustains a nuanced critical position.**
- **Structures discussion clearly and Communicates in written form with precision, clarity and accuracy.**
- **Provides scholarly and accurate references.**